IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 30, 2007 Session

JAMES A. KILGORE v. JOAN VICTORIA KILGORE v. SHIRLEY WORLEY, ET AL.

Direct Appeal from the Circuit Court for Grundy County
No. 7150 Thomas W. Graham, Judge

No. M2006-00495-COA-R3-CV - Filed on August 1, 2007

In this challenge to a property division following divorce, the primary dispute involves two parcels of real property the couple had conveyed to their son in an effort to defraud the IRS. The son later conveyed the larger parcel to the husband's sister. After the husband filed a complaint for divorce, the wife filed a third party complaint against the son and sister-in-law, record owners of the parcels, to recover the real property as a marital asset. The trial court found that the conveyance to the son was never consummated, that the husband had orchestrated their efforts to transfer the property, and that the wife should be awarded the debt-free parcels of land. The record contains clear and convincing evidence that rebuts the presumption of delivery established by the recording of the deeds to the grantees. There was a clear failure of delivery to the son, rendering the transfer void ab initio. Finding the award of real property to the wife proper and the division of the marital estate not inequitable, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Affirmed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J. and DON HARRIS, SR. J., joined.

Jennifer Austin Mitchell and L. Thomas Austin, Dunlap, Tennessee, for the appellant, James A. Kilgore.

Keith L. Grant, Dunlap, Tennessee, for the appellants, Shirley Worley and Michael Jason Kilgore.

Stephen T. Greer, Dunlap, Tennessee, for the appellee, Joan Victoria Kilgore.

OPINION

This appeal presents the issue of whether certain tracts of real property were marital assets of James A. and Joan Victoria Kilgore ("Mr. Kilgore," "Mrs. Kilgore," "the Kilgores") at the time of their divorce and thus subject to distribution. Determinative to the resolution of this dispute is the effect of an attempted transfer of two parcels of land (1.57 acres and 21.98 acres) from the

Kilgores to their son Jason ("Jason") in January of 2003, two years before Mr. Kilgore filed for divorce. The Kilgores were having financial problems at the time and owed the IRS a substantial sum of money. There is no dispute that they deeded the parcels to their son as a gift[1] and for the purpose of placing the property beyond the reach of the IRS and other creditors. Then, in October of 2004, Jason deeded the larger tract to Mr. Kilgore's sister, Shirley Ann Worley (Ms. Worley), for no money and upon his father's bidding.

After twenty-five (25) years of marriage, Mr. Kilgore filed a complaint for divorce on March 11, 2005, alleging inappropriate marital conduct. In the complaint, Mr. Kilgore listed assets including the marital residence, the underlying seven acres, a GMC pickup truck, and construction tools used in his business. Mr. Kilgore valued the assets he requested at approximately $137,800. He also estimated the marital debt at approximately $190,621.36. Mr. Kilgore sought all listed assets and agreed to assume all debt, making allowances only for Mrs. Kilgore to retain her jewelry, certain household furnishings, and the personal property in her possession. Mrs. Kilgore filed an answer and subsequently filed a third party complaint against Jason and Ms. Worley, the respective record owners of the 1.57-acre and 21.98-acre tracts Mrs. Kilgore contended were part of the marital estate. Rather than seeking the real property, Mrs. Kilgore instead requested a cash payment of $72,500, which represented the value of the real property in dispute, reduced by her attorney's fees.

The record reveals that for more than a year leading up to the divorce proceeding, Mr. Kilgore provided little to no support for Mrs. Kilgore. Indeed, Mrs. Kilgore filed a motion for contempt or reinstatement of medical insurance in May of 2005, in response to her removal from the Kilgore's existing health insurance policy shortly after the filing of the divorce complaint.[2] According to his testimony, Mr. Kilgore believed God had given him a divorce when Mrs. Kilgore moved out of the marital residence permanently in January of 2005. Mr. Kilgore's actions, although consistent with this belief, still violated the automatic injunction pursuant to Tennessee Code

[1] One deed recited that Son paid $6,000 for the 1.57-acre parcel, but the parties agreed at trial that he paid nothing for either parcel. The other deed recited consideration of $17,000, but that recital was never signed.

[2] Mr. Kilgore had tried to terminate Mrs. Kilgore's coverage once before. On January 23, 2005, after a failed attempt at reconciliation, Mrs. Kilgore left the marital residence for the second and final time, and Mr. Kilgore attempted (albeit unsuccessfully) to remove her from the insurance policy four days later.

Annotated Section 36-4-106(d)(2).[3] The trial court entered an order on May 31, 2005, requiring Mr. Kilgore to reinstate Mrs. Kilgore's medical insurance.

The divorce proceeding occurred on January 23, 2006, and the court entered a final divorce decree on February 3, 2006, reflecting the following findings and conclusions:

FINDINGS

> Based on the proof the Court finds the Plaintiff is entitled to a divorce based on the inappropriate marital conduct of the Defendant when she refused to move to Knoxville and thereafter moved to Florida where she has resided for approximately one year. The proof would also have supported a finding of inappropriate marital conduct by the Plaintiff if the late filed Counter Complaint of the Defendant had been allowed. As in many divorce cases, there is fault on both sides. As to the Third Party Complaint, this Court finds that the land transfers of the 21.98 acre tract and the 1.57 acre tract were orchestrated by the Plaintiff simply to hide these assets from creditors or the Defendant. The proof shows that the son paid no consideration for either tract and when directed by the Plaintiff, conveyed the 21.98 acre tract to Plaintiff's sister, again for no consideration. The proof further shows the son did not know the deed existed until weeks or months after they had been executed and recorded and that the Plaintiff continued after the conveyances to pay property taxes for both tracts. To allow these clearly marital assets to be placed outside the marriage for no consideration would make it impossible to make an appropriate or equitable distribution of the true assets of the marriage. Under the facts, Third Party Defendants have no equitable or legal claim to these properties. Additionally, the proof shows the Plaintiff conveyed a 2004 Chevrolet Impala to his son during the pendency of this case. The Court views this car to be a $12,000.00 asset of the marriage which must be considered in weighing any equitable property distribution.

---

[3] (d) Upon the filing of a petition for divorce or legal separation, . . . the following temporary injunctions shall be in effect against both parties until the final decree of divorce or order of legal separation is entered, the petition is dismissed, the parties reach agreement, or until the court modifies or dissolves the injunction, written notice of which shall be served with the complaint:

. . . .

(2) An injunction restraining and enjoining both parties from voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for nonpayment of premiums, any insurance policy, including, but not limited to, life, health, disability, homeowners, renters, and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries without the consent of the other party or an order of the court. "Modifying" includes any change in beneficiary status.

Tenn. Code Ann. § 36-4-106(d)(2)(2005).

CONCLUSION

The Court has reviewed the debts and assets as well as the suggested property distributions of the parties as set forth in Exhibits "1" and "19" and has come to the following conclusions, to-wit:

1) The Plaintiff through his business has the capability over time of paying the debts of the marriage, much of which were business related.

2) The Defendant, based on her age and education, is limited in her ability to earn income. Her $12.50 per hour wage is near her potential as an income earner and is barely sufficient to meet her nondiscretionary needs.

3) The business equipment is necessary for the Plaintiff to maintain his income.

4) The length of the marriage and the Defendant's limited ability to support herself requires she be awarded debt free property.

The trial court then awarded an absolute divorce to Mr. Kilgore and awarded to him all property listed on his schedule of assets, with the exception of Mrs. Kilgore's jewelry. Finding that Mr. Kilgore's recent purchase and transfer of the $12,000 Chevrolet Impala to Jason was improper, the trial court awarded it to Mr. Kilgore. Also consistent with Mr. Kilgore's request, the trial court ordered him to assume all marital debt. The court then awarded to Mrs. Kilgore the two tracts of real property in question and the Ford Focus given to her by her parents. Finally, the court awarded to Mrs. Kilgore certain household furnishings, jewelry, and personalty placed in storage.

Mrs. Kilgore subsequently filed a motion to alter or amend the judgment to include certain household furnishings that had been omitted from the order. As Mr. Kilgore, Ms. Worley, and Jason had already filed notices of appeal by that time, this Court granted Mrs. Kilgore's motion to stay the appeal proceedings pending the disposition of her motion in the court below. Following the trial court's entry of an amended order including and distributing those items as requested, this Court heard oral argument on the matter. On appeal, Ms. Worley and Jason (and, oddly, Mr. Kilgore) challenge the trial court's award of both parcels to Mrs. Kilgore. Mr. Kilgore also appeals the allocation of all marital debt to him.

Mr. Kilgore vigorously challenges the trial court's award of real property to Mrs. Kilgore and asserts it was not part of the marital estate. We will not consider his arguments on appeal as they relate to these tracts of land, as he is not aggrieved by the trial court's award. Indeed, we note that Mr. Kilgore seems to protest too much. Ironically, he received all the assets he requested in his complaint. Rather than relying on the fact of a larger marital estate to bolster his challenge of the debt allocation, Mr. Kilgore instead challenges the court's ruling on the land and, at the same time, argues the division is inequitable. Were this Court to reverse the trial court's ruling regarding

ownership of the land, finding Ms. Worley and Jason to be the proper owners, Mr. Kilgore would doubtless suffer a significant reduction in his share of the marital estate. It further appears that Mr. Kilgore is paying for the services of his son's attorney in this matter. These factors suggest far more than a desire to give this property to his son.

Ms. Worley and Jason invoke equitable principles on appeal and assert that Mrs. Kilgore cannot now disavow a conveyance in which she participated with the intent to hinder creditors and the IRS. Mrs. Kilgore argues that there was never a valid transfer to Jason because there was no consideration, no delivery, and no acceptance. She asserts that Mr. Kilgore always was and continues to be in control of the property. Alternatively, she argues that even if the transfer was valid, the Kilgores retained an equitable interest in the parcels by way of a resulting trust. Ms. Worley and Jason submit there is no evidence in the record to support a resulting trust.

Because the record clearly reveals that there was no delivery of the deed to Jason, we conclude that title never transferred from the Kilgores to him. And it thus follows that Jason's attempted conveyance to Ms. Worley was equally ineffectual due to the primary fact that Jason had nothing to convey to her. We decline to employ the equitable principles advanced by Ms. Worley and Jason because the facts of this case do not warrant their application. It further appears that the division of the marital estate, even including the two disputed tracts of land, was equitable in light of all the circumstances. We affirm.

Issues Presented and Standard of Review

We restate the issues presented on appeal as follows:

(1) Whether the trial court erred in granting Mrs. Kilgore property that the parties transferred to their son two (2) years prior to Mr. Kilgore's filing of the divorce complaint; and

(2) Whether the trial court failed to make an equitable division of the assets and liabilities.

We review the trial court's findings of fact *de novo* on the record, with a presumption of correctness. Tenn. R. App. P. 13(d); *Berryhill v. Rhodes*, 21 S.W.3d 188, 190 (Tenn. 2000). We will not reverse the trial court's factual findings unless they are contrary to the preponderance of the evidence. *Id*. Our review of the trial court's conclusions on matters of law, however, is *de novo* with no presumption of correctness. *Taylor v. Fezell*, 158 S.W.3d 352, 357 (Tenn. 2005).

Analysis

Real Property

We first address the central issue on appeal: whether the trial court erred when it awarded the two parcels of real estate to Mrs. Kilgore despite the fact that Jason and Ms. Worley were the respective record owners of the property. To the extent it relied on want of consideration as a basis for its ruling,[4] we must disagree with the trial court's reasoning. The absence of pecuniary consideration was an improper basis upon which to void the Kilgore's conveyance to Jason. A sale of real property is not required for a valid conveyance; rather, a proper donative transfer of real property is complete and irrevocable after the delivery of the deed to the grantee. *Carmody v. Trs. of Presbyterian Church*, 203 S.W.2d 176, 177 (Tenn. Ct. App. 1947). Tennessee courts have previously held that love and affection constitute sufficient consideration for a donative transfer of realty. *Smith v. Riley*, No. E2001-00828-COA-R3CV, 2002 WL 122917, at *3 (Tenn. Ct. App. Jan. 30, 2002), *perm. app. denied* (Tenn. Sept. 16, 2002; *Thomas v. Hedges*, 183 S.W.2d 14, 17 (Tenn. Ct. App. 1944). Similarly, there is authority finding sufficient consideration for a conveyance of realty in exchange for previously received financial assistance. *See Carmody*, 203 S.W.2d at 177. And, although Tennessee's recording system distinguishes between donative transfers and bona fide purchases of real property, *see, e.g.,* Tennessee Code Annotated Section 66-26-103, the instant dispute does not implicate these distinctions in the law. This case does, however, implicate the issue of delivery.

An otherwise valid gift of realty by a grantor is complete and irrevocable after delivery of the deed to the grantee. *Carmody*, 203 S.W.2d at 177. Without proper delivery, title in real property cannot pass from the grantor to the grantee. *Miller v. Morelock*, 206 S.W.2d 427, 430–31 (Tenn. 1948); *Mast v. Shepard*, 408 S.W.2d 411, 413 (Tenn. Ct. App. 1966). To effect a delivery, the grantor must part with dominion and control over the deed without reservation. *See Mast*, 408 S.W.2d at 413. Manual transfer of the deed is not necessary if the grantor intends for the deed to take effect without its physical transmission to the grantee. *Estate of Atkinson v. Allied Fence and Improvement Co.*, 746 S.W.2d 709, 712 (Tenn. Ct. App. 1987); *Blackmore v. Crutcher*, 46 S.W.310, 311 (Tenn. Ct. App. 1898); 1 Tenn. Juris. Deeds § 10 (2004). Where delivery is in question, the intention of the grantor, determined from his or her words and conduct, is a controlling factor. *Early v. Street*, 241 S.W.2d 531, 534 (Tenn. 1951). Because rarely susceptible of proof by direct evidence, the grantor's intent may be gleaned from circumstantial evidence and from generally recognized presumptions. *Cox v. McCartney*, 236 S.W.2d 736, 738 (Tenn. 1950); *Jones v. Jones*, No. 01A01-9005-CH-00192, 1991 WL 129197, at *4 (Tenn. Ct. App. July 17, 1991).

The recording of a properly executed and acknowledged deed raises a presumption of delivery and acceptance. *Jones v. Jones*, 206 S.W.2d 801, 847 (Tenn. 1947). This presumption may be rebutted by clear and convincing evidence that the grantor never intended delivery to occur or that

[4]The order itself is less than clear as to the exact legal basis for the ruling, as it mentions the lack of consideration as well as facts supporting a failure of delivery.

delivery never took place. *Jones*, 1991 WL 129197, at *4 (citing *Davis v. Garrett*, 18 S.W. 113, 114 (Tenn. 1892)). For example, clear and convincing evidence that the grantor did not presently intend to divest himself of the interest in question would rebut the presumption and render the transaction void ab initio. *See Mast v. Shepard*, 408 S.W.2d 411,413 (Tenn. Ct. App. 1966)(noting that "a deed without delivery is void ab initio, and in the absence of delivery all other formalities are ineffectual to pass title"). "Legal delivery is not just a symbolic gesture. It necessarily carries all the force and consequence of absolute, outright ownership at the time of delivery or it is no delivery at all." *Rosengrant v. Rosengrant*, 629 P.2d 800, 803–04 (Okla. Ct. App. 1981).

Ms. Worley and Jason made out a prima facie case of delivery and acceptance by showing the deeds had been recorded. We now consider whether the record contains clear and convincing evidence to rebut this presumption and conclude that there exists sufficient evidence to do so. The record reveals that Husband never intended to cede control of the deed or the property to anyone; that the pro forma attempt at conveyance was a sham; and that delivery never occurred. Four factors drive this conclusion, and none of the supporting facts are disputed.

First, there was no manual delivery of the deeds to Jason. In fact, Jason first saw copies of the deeds when Mrs. Kilgore filed her third party complaint against him and Ms. Worley. Second, Mr. Kilgore retained the deeds in his dresser drawer, and Jason never knew their location. Third, Jason learned of the conveyance only after the transaction, and no one could specify when Mr. Kilgore told him about it.

Fourth, Mr. Kilgore's conduct subsequent to the execution and recording of the deeds was inconsistent with a valid conveyance to Jason, and Jason exhibited conduct consistent with non-delivery. Up to the time of the divorce proceeding, Mr. Kilgore had continued to pay the property taxes and the utilities for the disputed parcels. Moreover, the Kilgores paid the recording fees, and Jason never made any improvements to the land. In contrast, Mr. Kilgore started to build a garage on the land after the conveyance to Jason. Mr. Kilgore also granted Ms. Worley permission to move her mobile home on the land after the conveyance to Jason. Three months after she moved on the property, Jason deeded the larger parcel to her. At the time of the transfer, the Kilgores were separated, and Mr. Kilgore "counseled" Jason to transfer property to Ms. Worley so Jason could avoid getting tangled up in his parents' divorce. No divorce was then pending. Mr. Kilgore planned the transfer and saw to the details; Jason never spoke to Ms. Worley about the transfer before it occurred and even believed he was only deeding the small area surrounding her mobile home, not the entire 21.98-acre parcel. And, as before, no money passed hands. The trial court questioned Jason about this transfer as follows:

> THE COURT: But then when your dad comes to you and says, we need [the land] to go on to someone else, that was okay, too, and you signed it on, except for the [smaller tract], right?
>
> [JASON]: Yes, I agreed to it.

THE COURT: I mean, there was no reason, if it was just a little piece of property just for the mobile home, you didn't need to transfer 22 acres, you could have transferred an acre or two, couldn't you?

[JASON]: I could have.

THE COURT: So, really, your dad was controlling the situation, even after it came to you, in fairness?

[JASON]: I guess whatever.

Although Mr. Kilgore sought to divest himself of record ownership to defraud the IRS, he clearly never intended to surrender control or de facto ownership of it. We agree with Mrs. Kilgore that he was and still remains in control of those parcels. There was never manual delivery of the deeds to Jason, and there is scant information regarding Mr. Kilgore's declaration to Jason that the Kilgores had given him the property. The above indicia of retained control and ownership on the part of Mr. Kilgore clearly and convincingly rebut the presumption established by the recorded deeds.

We acknowledge that Mrs. Kilgore also executed the deeds to Jason and recorded them upon her husband's instruction; however, the record reveals that she carried out these instructions after voicing her objection to the plan. The record also reveals that Mr. Kilgore sought to, and often did, control more than the disputed parcels of real estate. For these reasons, we refer to Mr. Kilgore's (as opposed to the Kilgores') intent with respect to delivery because, in the words of Mrs. Kilgore, "you don't tell [Mr. Kilgore], No, I'm not going to do it." Indeed, it was Mr. Kilgore, not Mrs. Kilgore, who continued to exercise dominion over the real estate.

We conclude that the conveyance to Jason was void ab initio, *see Mast*, 408 S.W.2d at 413, rendering the subsequent conveyance to Ms. Worley also void.[5] The Kilgores retained ownership of the parcels despite their efforts to the contrary. Although we find error in the trial court's reasoning pertaining to consideration, we concur in the result. Further, the facts of this case do not warrant the application of the unclean hands doctrine, and we need not address the resulting trust argument in light of our ruling.

Division of the Marital Estate

Mr. Kilgore argues that the trial court inequitably divided the marital estate. It awarded the marital residence, its underlying property, some vehicles, and construction equipment to Mr. Kilgore. Mrs. Kilgore received the two parcels of real estate in dispute, some jewelry, some household furnishings, and the vehicle her parents gave her. Mr. Kilgore does not assert that the court should

[5] Ms. Worley conceded at trial that the 21.98-acre parcel was not her property. She stated she was just "holding" it for Jason.

have awarded him more of the marital assets but instead appeals the court's allocation of all of the marital debt to him. He argues that the value of the parcels totaled $113,000, and that the assets he received totaled $137,800, but that the court "strapped" him with $190,000 of marital debt.

After the trial court classifies and values each asset, it then must divide the marital estate in an equitable manner. Tenn. Code Ann. § 36-4-121(a)(1); *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at *7 (Tenn. Ct. App. Sept. 1, 2006) (*no perm. app. filed*); *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). To do so, it must consider and weigh very carefully the relevant statutory factors set forth in section 36-4-121(c) of the Tennessee Code.[6] Although we presume that marital property is owned equally, *Bookout v. Bookout*, 954 S.W.2d 730, 731 (Tenn. Ct. App. 1997), an equitable division of the marital estate does not necessarily mean a precisely equal one. *Robertson v. Robertson,* 76 S.W.3d 337, 341 (Tenn. 2002); *Fox*, 2006 WL 2535407, at *7; *Batson*, 769 S.W.2d at 859. A fair division of marital property is evident in its final results. *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at *7 (Tenn. Ct. App. Step. 1, 2006)(*no perm. app. filed*)(citing *Altman v. Altman*, 181 S.W.3d 676, 683 (Tenn. Ct. App. 2005)). Trial courts are vested with a great deal of discretion when classifying and dividing the marital estate, and their decisions are entitled to great weight on appeal. *Sullivan v. Sullivan*, 107 S.W.3d 507, 512 (Tenn. Ct. App.2002). Accordingly, unless the court's decision is contrary to the preponderance of the evidence or is based on an error of law, we will not interfere with the decision on appeal. *Id.*

---

[6]This section of the Code provides as follows:

> (c) In making equitable division of marital property, the court shall consider all relevant factors including:
>
> (1) The duration of the marriage;
>
> (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
>
> (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
>
> (4) The relative ability of each party for future acquisitions of capital assets and income;
>
> (5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
>
> (6) The value of the separate property of each party;
>
> (7) The estate of each party at the time of the marriage;
>
> (8) The economic circumstances of each party at the time the division of property is to become effective;
>
> (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
>
> (10) The amount of social security benefits available to each spouse; and
>
> (11) Such other factors as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c)(2005)

First, it appears that Mrs. Kilgore received less, and Mr. Kilgore more, marital property than Mr. Kilgore represents on appeal. The two parcels of real estate were appraised at $80,000, and this figure was not challenged at trial. Mrs. Kilgore has consistently used this valuation throughout these proceedings. Mr. Kilgore, however, contends that she values the parcels at $113,000 and cites to the record to support this assertion. We can find nothing in the record that even suggests such a valuation.[7] On the other hand, the trial court found that Mr. Kilgore had purchased the Chevrolet Impala, valued at $12,000, and improperly transferred it to Jason just prior to the divorce proceedings. The court included that amount in the marital estate and awarded it to Mr. Kilgore for the purposes of insuring a fair division. Finally, although the trial court did not establish the exact values for Mr. Kilgore's construction equipment, we note the vast discrepancy between the $4,500 value assigned by him for the purposes of this proceeding and, for securing a state contractor's license, his valuation of the same equipment[8] at approximately $105,000.

Second, we note that, in the schedule of assets and liabilities he submitted to the trial court, Mr. Kilgore agreed to assume the marital debt. He has received exactly what he proposed in the schedule: virtually all the marital assets (not including the disputed parcels of land) and marital debt totaling $190,621.36.[9] Further, the trial court's findings regarding the nature of the debts, Mrs. Kilgore's inability to make payments on the debt, and Mr. Kilgore's ability to do so are well supported in the record. Finally, although Mr. Kilgore was the primary income earner of the family, Mrs. Kilgore's contributions to the marriage over the course of twenty-five (25) years were significant. She worked full-time, was the primary caregiver for their son and for her stepdaughter, whom she raised from infancy, and undertook all homemaking tasks herself. We cannot say the evidence in this case preponderates against the trial court's division of the marital estate and so affirm its judgment.

---

[7] In his tabulation of assets submitted on appeal, Mr. Kilgore represents that Mrs. Kilgore valued the larger and smaller tracts, respectively, at $88,000 and $25,000. He cites to Exhibit 19, the schedule of assets and liabilities submitted by Mrs. Kilgore at trial. That schedule plainly places values of $70,000 and $10,000 on those parcels. Similarly, Mr. Kilgore cites to Mrs. Kilgore's trial testimony regarding this exhibit, but the transcript reveals that she confirmed a value of $85,000 on the 7.38-acre tract still owned at that time by the Kilgores and, regarding the two disputed parcels, merely identified the name of the appraiser from whom she received the valuations. Her testimony does not contradict the valuations of $70,000 and $10,000 set out in Exhibit 19.

[8] Between the time of filing for the contractor's license and the divorce proceeding, Mr. Kilgore had disposed of one item of construction equipment, a forklift, by selling it. This, apparently, was the only material change in his equipment inventory.

[9] At the bottom of the schedule of assets and liabilities, Mr. Kilgore inserted the following language:

*** Wife is to be awarded the Jewelry and personal property in her possession.
*** Husband to be awarded the remaining assets listed above and responsible for the debts.

According to this proposal, Mr. Kilgore would receive marital assets valued at $ 137,800 and marital debt totaling $ 190,621.36.

We hold that the two parcels of real estate were marital assets and subject to distribution upon the divorce of the Kilgores. The conveyances to Jason were void for lack of delivery for the following reasons: first, because there was no manual transmission of the deeds (or even copies of them) to Jason; second, because the Kilgores notified Jason of the conveyance well after the deeds were executed; third, because Mr. Kilgore retained the deeds in his dresser drawer and never told Jason of their location; fourth, because Jason never made improvements to the property or exercised dominion over it; and, fifth, because Mr. Kilgore remained in control of the property and exhibited conduct consistent with ownership. Even in light of these additional marital assets, the evidence does not preponderate against the trial court's division of the marital estate. For the foregoing reasons, we affirm the judgment of the trial court. Costs of this appeal are taxed to Mr. James A. Kilgore and his surety, for which execution shall issue if necessary.

_____

DAVID R. FARMER, JUDGE